

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

COSTELLO BLACKWELL,

Petitioner,

v.

PEOPLE OF THE UNITED STATES OF  
CALIFORNIA,

Respondent.

No. 2:25-cv-00032-DC-CSK (HC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS

(ECF Nos. 15, 16)

Petitioner, a state prisoner proceeding pro se, filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 31, 2025, the magistrate judge filed findings and recommendations herein which were served on petitioner and which contained notice to petitioner that any objections to the findings and recommendations were to be filed within fourteen days. Petitioner did not file objections to the findings and recommendations.

The court presumes that any findings of fact are correct. See Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed de novo. See Britt v. Simi Valley Unified School Dist., 708 F.2d 452, 454 (9th Cir. 1983). Having

///

1 reviewed the file, the court finds the findings and recommendations to be supported by the record  
2 and by the magistrate judge's analysis.

3 The findings and recommendations recommended that petitioner be granted thirty days  
4 from any order by the district court adopting the findings and recommendations to choose one of  
5 the following options:

6 (a) renew the motion for stay under Rhines v. Weber, 544 U.S. 269  
7 (2005), accompanied by an amended petition that includes the  
unexhausted ineffective assistance of trial counsel claim; or

8 (b) file a motion for stay under Kelly v. Small, 315 F.3d 1063 (9th  
9 Cir. 2003); or

10 (c) proceed with the petition filed May 22, 2024, choosing to pursue  
only those three claims identified therein: (1) prosecution admitted  
11 false testimony about the DNA evidence; (2) the trial court erred  
when prosecution was allowed to admit evidence about the  
12 uncharged murder of Huckaby; and (3) the trial court erred in  
excluding evidence Cortez made a statement that contradicted his  
13 testimony that Blackwell shot him. (ECF No. 6 at 3-9).

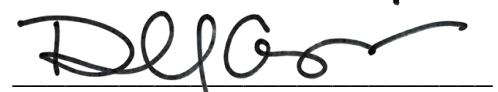
14 (ECF No. 16 at 5.) However, on April 22, 2025, while the findings and recommendations were  
15 pending before the undersigned, petitioner filed another motion for a stay and abeyance. (ECF  
16 No. 17.) Therefore, petitioner has already opted to file a motion for a stay and that motion is now  
17 pending consideration by the magistrate judge.

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. The findings and recommendations (ECF No. 16) are adopted;
- 20 2. Petitioner's motion for stay and abeyance (ECF No. 15) is denied without  
21 prejudice; and
- 22 3. This matter is referred back to the assigned magistrate judge for consideration of  
23 the motion for a stay filed by petitioner on April 22, 2025. (ECF No. 17).

24  
25 IT IS SO ORDERED.

26 Dated: September 16, 2025

27   
28 Dena Coggins  
United States District Judge